APPEAL NO. 010521

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 7, 2001. This was a case seeking reimbursement for mileage between the appellant's (claimant) hometown and the office of his treating chiropractor in City 1, over 20 miles each way. The hearing officer determined that the claimant did not show that equivalent medical care would not be available closer to his residence.

The claimant appeals, and argues that the mileage was paid in the past. The claimant argues that the evidence was not correctly weighed by the hearing officer and that some of the CCH was not taped. There is no response from the respondent (carrier).

DECISION

We affirm the hearing officer's decision.

The hearing officer did not err in denying mileage payment to the claimant. The evidence was conflicting and focused largely on a matter not in issue nor required--whether the claimant should consider changing his treating doctor. The hearing officer inadvertently left the recording machine off during the telephone testimony of the adjuster, but the parties assisted the hearing officer in reconstructing the substance of what she said. The adjuster had testified that she did not locate a chiropractor in the claimant's hometown through an Internet search and the nearest chiropractor was located in a town that was 21 miles away. However, the claimant testified that he knew of a chiropractor in his town (this chiropractor had treated the claimant's wife for two years), and had visited with him. The hearing officer chose to believe this over the adjuster's testimony. The claimant also said that he preferred to keep treating with his own doctor although it was a drive of over 100 miles round trip. Therefore, although the claimant maintains the right to seek treatment elsewhere, mileage payments are not required to ensure that the claimant obtains medical treatment. As the hearing officer pointed out, mileage reimbursement is now controlled by Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 134.6 (Rule 134.6).

It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182

(Tex. App.-San Antonio 1983, writ ref'd n.r.e.). That was not the case here, and we affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge